IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 18A of 2003 (S/S)
(Old No. 25110 of 1996)

Keshav Dutt …… Petitioner

Versus

Commandant 31st Battalion,
Provincial Armed Constabulary
Rudrapur and others …… Respondents

Date of decision: 17th August , 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

WRIT PETITION NO. 18A (S/S) 2003

Keshav Dutt. Petitioner.

Versus

Commandant, 31 Battalion,
Provincial Armed Constabulary
Rudrapur , Udham Singh Nagar,
U.P. & others. Respondents.

Shri J.C. Pandey, Learned Counsel for petitioner
Standing Counsel for respondents.

Hon'ble P.C. PANT – J.

1. This Writ Petition has been moved under Article 226 of Constitution of India for writ in the nature of certiorari quashing the order dated 04.05.1996 whereby services of the petitioner have been dispensed with. The petitioner has further sought to quash the order dated 05.10.1999 dismissing his departmental appeal against the order of dismissal/termination from the service.

2. Brief facts of the case are that the petitioner was selected as Constable in the Police Department in the year 1974. After completion of his training and probation period he was confirmed as Constable. In December, 1981, the petitioner was sent for training of Driver in Police Training College, Sitapur and after completion of training he was assigned work of Driver in provincial Armed Constabulary. In the year 1996 he was posted in 31st Battalion of P.A.C. at Rudrapur on

14.05.1996 when the petitioner was driving Government vehicle, a Truck driver hit the vehicle and in the accident petitioner also got minor injuries. The Driver of the Truck to save himself lodged an F.I.R. the same day on 14.05.1996 against the petitioner but no departmental enquiry was initiated against the petitioner. However, under Rule 8 of Police Officers of the subordinate rank (Punishment and Appeals) Rules, 1991 an order was passed on same day 14.05.1996 dismissing the petitioner from service (Copy of the order Annexure 2). On the same day another order purporting to have been passed under U.P. Government Rules, 1975 terminating the services of the petitioner (Copy Annexure 3) was issued. In view of Regulation 541 of the Police Regulation a police constables gets confirmed on completion of probation or extended period of probation. The petitioner by the time of accident had completed almost 20 year service, as such, his termination from the service as temporary government servant and dismissal under rule 8 of U.P. Police Officers of the Subordinate rank (Punishment and Appeals) Rules, 1991 without departmental inquiry is illegal. Hence the writ petition.

3. During the pendency of writ petition the petitioner has been acquitted from the court of Judicial Magistrate, Rudrapur from the charge of offences punishable under sections 279, 427 of the Indian Penal Code, a copy of the said judgment has been Annexed as Annexures SA-3 to the supplementary affidavit dated 6th July, 2003. Further meanwhile departmental

appeal of the petitioner has been rejected and the same has also been challenged in this writ petition by way of amendment.

4. Counter affidavit has been filed by the respondent in which it is stated that the petitioner was driving government Jeep No. URN 5714 on the date of accident and he was in a drunken state. On being medically examined he was found in a condition of intoxication. Earlier also he was censured for driving the vehicle speedly in a drunken state. That is why he was not confirmed earlier. In the circumstances it is stated in the counter affidavit that the dismissal/termination of the petitioner was justified.

5. I heard learned counsel for the parties and persused the affidavits and Annexures annexed thereto.

6. The question for consideration before this court is whether the departmental appeal of the petitioner was wrongly rejected and whether the services of the petitioner were wrongly dismissed.

7. The most strange part in this case is this that there are two orders passed on 14.05.1996, one dismissing the petitioner from service dispensing the inquiry under Rule 8 0f U.P. Police Officers of the Subordinate rank (Punishment and Appeals)Rules, 1991 by S. Ranuka Shastri, Commandant,31st Battalion P.A.C. Rudrapur (copy of order Annexure 2 to the writ petition). Another order of the same date with the

same letter number passed by the same Officer terminating the services of the petitioner under U.P.

Temporary Government Servant (termination from Service) Rules, 1975 (Annexure) It is not clear which order was passed earlier but learned Standing Counsel failed to explain as to why on the two orders were passed and to which of these two he relies. In the order of dismissal the reason for dismissal has been shown to be that the petitioner in a drunken state drove the government vehicle and dashed with a private truck. However, in the second order (Annexure 3) no reason for termination of the petitioner has been assigned. In the counter affidavit para 9 shows that the respondent want to stick and defend the order of dismissal. In para 17 of the counter affidavit it has been stated that after the petitioner-driver was found guilty only than he was dismissed from service. However, it is no where stated if the petitioner was charge sheeted and if he was given any opportunity to defend himself. Since the date of accident for which the petitioner is alleged to have been responsible and the date of the order dismissal are the same it can very well be gathered neither any charge sheet was given to the petitioner nor any departmental inquiry was held against him. Rule 8 of U.P. Police Officers of the Subordinate rank (Punishment and Appeals) Rules 1991 reads as under:

Rule 8

“Dismissal and Removal (1) No police officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

(2) No police officer shall be dismissed, removed or reduced in rank except after proper enquiry and disciplinary proceedings as contemplated by these rules

Proved that this rule shall not apply.

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge

or

(b) where the authority empowered to dismiss or remove a person or to reduce him in ranks satisfied that for some reasons to be recorded by that authority in writing, it is not reasonable practicable to hold such enquiry

or

(c) where the Government is satisfied that in the interest of the security of the state it is not expedient to hold such enquiry.

(3) All orders of dismissal and removal of Head Constables or Constables shall be passed by the Superintendent of police. Cases in which the Superintendent of police recommends dismissal or removal of a sub-inspector or an Inspector shall be forwarded to the Deputy Inspector General concerned for orders.

(4) (a) The punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall be dismissal unless

the punishing authority for reasons to be recorded in writing awards a lesser punishment.

(b) Every officer convicted by the court for an offence involving moral turpitude shall be dismissed unless the punishing authority for reasons to be recorded in writing considers it otherwise."

8. The controversy contained in sub rule (2) of Rule 8 as quoted above shows that the inquiry can be dispensed with only if the delinquent official is convicted on a criminal charge or for reasons recorded in writing the inquiry is not practicable or in the interest of security of the State it is not expedient to hold such inquiry. The present case is covered by neither of the three. Rather the petitioner has been acquitted from the charge of the offences punishable under sections 279,427 of the Indian Penal Code as is clear from the copy of judgment dated 07.08.1998 (Copy Annexure SA-3 to supplementary affidavit) wherein it has been held that the charge relating to the negligence & drunkenness in question was not proved. I inquired from Standing Counsel during arguments if any appeal against the acquittal has been preferred or leave for appeal has been sought The answer of the Standing Counsel was negative. As such, the finding of the Judicial Magistrate stands final. In these circumstances this court has no hesitation in holding that the punishment of dismissal has been wrongly

awarded against the petitioner and the appeal of the petitioner has wrongly been rejected.

9. In the counter affidavit the State has only defended the order of dismissal and have not stated a word if they take a stand that the simpliciter termination passed on the same date is to be defended. Otherwise also after 20 years of service in view of the Regulation 541 of the Police Regulations which is being reproduced below it can not be said that the petitioner was still temporary government servant:

> *"541(1)A recruit will be on probation from the date he begins to officiate in a clear vacancy. The period of probation will be two years except in the following cases;*
>
> *(a) those recruited directly in the criminal investigation department or District Intelligence staff will be on probation for three years, and*
>
> *(b)those transferred to the mounted police will be governed by the direction in paragraph 84 of the police Regulation.*
>
> *If at the end of the period of probation conduct and work have been satisfactory and the recruit has been approved by the Deputy Inspector General of Police for service in the force, the Superintendent of police will confirm him in his appointment.*

(2) In any case, in which either during or at the end of the period of probation, the Superintendent of police is of opinion that a recruit is unlikely to make a good police officer he may dispense with his service. Before, however, this is done the recruit must be supplied with specific complaints and ground on which it is proposed to discharge him and then he should be called upon to show cause as to why he should not be discharged. The recruit must furnish his representation in writing and it will be duly considered by the Superintendent of Police before passing the orders of discharge.

(3) Every order passed by the Superintendent under sub-paragraph(2) above shall subject to the control of the Deputy Inspector General be final."

10. For reasons as discussed above, accordingly the writ petition is allowed. The impugned orders dated 14.05.1996 (Annexures 2 and 3) and order dated 28.08.1997 of rejection of departmental appeal (copy Annexure SA-2 to supplementary affidavit) are quashed. The petitioner shall be reinstated forthwith in service. The petitioner shall be treated in continuous service. However, the respondents are at liberty to initiate departmental inquiry regarding alleged misconduct of the petitioner in case they feel it just to do so even after the acquittal of the petitioner from the court of Judicial Magistrate, Rudrapur.

Dated: August 17, 2004 **(P.C. Pant – J)**

S.S.Negi